A sharp-eyed Democratic staff member spotted the terse paragraph sitting like a toxic clam in the muck of the omnibus spending bill, a 3,000-page disgrace in its own right that capped months of Capitol procrastination. Once the provision was found, everyone felt compelled to denounce it. Senator Charles Grassley, the Iowa Republican, growled that it summoned ''the dark days in our history when taxpayer information was used against political enemies.'' The Senate declared the clause void, forcing G.O.P. leaders in the House, where the gambit originated, to sheepishly follow suit. House leaders insisted there was never an intent to pry into taxpayers' lives. The goal, they said, was simply to establish better oversight of the tax collection bureaucracy. Really? Then how come anyone bothering to read the bill (and that did not include many members of Congress) could see what an outrageous license it provided for the appropriations committees to look into tax offices ''and any tax returns or return information contained therein.''

Embarrassed solons had to admit they had no idea what other dangerous items might be in the bill. Taxpayers can only hope someone keeps reading.●

IDEA

● Mr. HARKIN. Mr. President, I wish to thank my colleagues, Chairman GREGG and Senator KENNEDY, as well as Chairman BOEHNER and Representative MILLER, for conducting a truly bipartisan conference. When the legislative process is working properly, we have a fair negotiation, and more often than not, that produces a better bill. Not a bill that gives each of us everything we wanted, but a fair result given the two bills that we are charged with reconciling. And that is what we have here.

Last week, Washington Post's internet site ran a cartoon by Ted Rall that was one of the most egregious things I have ever seen. I don't know if many of you saw it, but it showed a student in a wheelchair with crossed eyes and drool coming from his mouth. He had joined a class of students without disabilities and here is what one of the panels of the cartoon read: ''The special needs kids make people uncomfortable and slow the pace of learning.'' The cartoon showed the class changing from higher level math to simple addition because of the special education student.

The cartoon was supposed to be some kind of analogy to the United States, but it was very hard to understand the point. What was crystal clear, however, was the author's bigotry and stereotyping of children with disabilities. I understand that the Post will no longer run cartoons by Mr. Rall because cartoons like this are not funny. They are hurtful and serve as a stark reminder of why we are here and why IDEA is such important civil rights legislation.

I was here in Congress in 1975, as were some of my Senate colleagues, when IDEA was enacted. It is important to remember why we passed this legislation in the first place. We passed it because bigotry and discrimination were keeping a million children with disabilities completely out of school. Those children were locked out of an education and denied the bright future that comes with an education. IDEA opened the doors of opportunity for those children.

I have participated in many subsequent revisions to the law over the past 29 years, and I am supporting this reauthorization because we continue our proud tradition of ensuring that children with disabilities have the right to a free, appropriate public education (FAPE). In addition, we improve the enforcement of that right.

Over the years, I have been involved in the debate about disciplining students with disabilities—and this was a major issue for the conferees. I know parents were very concerned about changes to this section of the law. I appreciate and understand those concerns because I have shared them.

While this reauthorization streamlines the discipline provisions, it continues several key principles. We will continue to consider the impact of the disability on what the child is doing, and we will not punish children for behavior that is related to their disability. It is also important that we continue to require that children receive educational services when they are being disciplined so they do not fall further behind. We also continue to emphasize that an assessment and services must be provided to children who have more serious behaviors so we can prevent future discipline problems.

I believe that discipline will become less and less of an issue over time as schools implement positive behavior supports more widely. Section 614(d)(3)(B), entitled Consideration of Special Factors, was added in 1997 to provide special emphasis on certain related services, modifications, and auxiliary aides which were not being considered by IEP teams and therefore not provided. The Senate bill modified subsection 614(d)(3)(B)(i) to state that behavioral supports must be provided when the child's behavior impeded his/her education or that of others. In conference, current law was reinstated in order to make the subsection consistent with the other special consideration subsections.

By instructing the IEP team to consider the specified services, it goes without saying that the services must be provided if the IEP team finds that the services will assist the child in benefiting from his/her educational program. In the case of behavioral interventions, the section sets forth the circumstances when the services would be required.

The regulations to IDEA specify that ''if, in considering the special factors . . . the IEP team determines that a child needs a particular device or service (including an intervention, accommodation, or other program modification) in order for the child to receive FAPE, the IEP team must include a statement to that effect in the child's IEP.'' 34 C.F.R. Sec. 346(c). And IEP services must be provided to the student. See Office of Special Education Programs Letter to Osterhout, 35 IDELR 9 (2000).

There has been widespread noncompliance with this requirement. However with reauthorization's increased emphasis on monitoring and enforcement, we expect this implementation will improve. Children whose behavior is impeding them or others from learning should get the positive behavioral supports they need when the IEP team considers this issue and finds that the services are part of FAPE for that child.

In addition, we allow schools to use up to 15 percent of their funds to address behavior issues for children who have not been identified as special education students. Also, Senator CLINTON has worked to include authorization for a program that would provide funding for systemic positive behavioral supports in schools.

Research by Dr. George Sugai and others indicates that the implementation of positive behavioral supports can have a dramatic impact on disciplinary problems. Dr. Sugai testified in 2002 before the Health, Education, and Labor Committee that by shifting to schoolwide positive behavioral supports, an urban elementary school decreased its office referrals from 600 to 100. It also decreased in 1 year its days of suspension from 80 to 35. Schools can save administrators' time and resources and cut down on discipline problems by implementing these programs.

Another area that generated discussion in this reauthorization is litigation and attorneys fees. However, the facts show that there is very little litigation under IDEA. GAO examined the data and concluded that the use of ''formal dispute resolution mechanisms has been generally low relative to the number of children with disabilities,'' according to a 2003 report titled, ''Special Education: Numbers of Formal Disputes are Low and States are Using Mediation and Other Strategies to Resolve Conflicts.''

My own State of Iowa follows the general trend of very low hearings and court cases. A graduate student in Iowa did a thorough analysis of due process hearings in Iowa from 1989–2001. Since the amendments in 1997, there were three hearings in 1998; three also in 1999 and four hearings in 2000. The Department of Education informs me that this trend continues, with only three hearings in each of the past 2 years. And there are thousands of children in special education in the State of Iowa.

Given the fact that litigation is generally not a problem in IDEA, in this reauthorization we merely include a standard that is used in other civil rights contexts—it is generally referred to by the case, *Christiansburg Garment Company* vs. *Equal Employment Opportunity Commission*, 98 S.Ct. 694 (1978). Both prongs of the Christiansburg

standard (filing or pursuing litigation that is groundless or for bad faith/improper purpose) adopted today are very high standards, and prevailing defendants are rarely able to meet them. They are designed for only the most egregious cases.

Also, in deciding cases under this standard, courts have considered the party's ability to pay. This is important because Congress does not intend to impose a harsh financial penalty on parents who are merely trying to help their child get needed services and supports. So in applying this standard and deciding whether to grant defendants fees, the court must also consider the ability of the parents to pay.

A school district would be foolhardy to try to use these provisions in any but the most egregious cases. Not only would the school be wasting its own resources if it did not prevail, but it would be liable for the parents' fees defending the action.

Unlike parents who are entitled to attorney fees if they win the case, the fact that a LEA ultimately prevailed is not grounds for assessing fees against a parent or parent's attorney. As the Supreme Court concluded in Christiansburg, courts should not engage in ''post hoc reasoning by concluding that, because a plaintiff did not ultimately prevail, his action must have been unreasonable or without foundation. This kind of hindsight logic could discourage all but the most airtight claims, for seldom can a prospective plaintiff be sure of ultimate success.''

As GAO found, there has been a low incidence of litigation under IDEA. The cases that are filed are generally pursued because parents have no other choice. Congress does not intend to discourage these parents from enforcing their child's right to a free, appropriate, public education. This is merely to address the most egregious type of behavior in very rare circumstances where it might arise.

In this reauthorization, we also include a 2-year statute of limitations on claims. However, it should be noted that this limitation is not designed to have any impact on the ability of a child to receive compensatory damages for the entire period in which he or she has been deprived of services. The statute of limitations goes only to the filing of the complaint, not the crafting of remedy. This is important because it is only fair that if a school district repeatedly failed to provide services to a child, they should be required to provide compensatory services to rectify this problem and help the child achieve despite the school's failings.

Therefore, compensatory education must cover the entire period and must belatedly provide all education and related services previously denied and needed to make the child whole. Children whose parents can't afford to pay for special education and related services when school districts fail to provide FAPE should be treated the same as children whose parents can. Children whose parents have the funds can be fully reimbursed under the Supreme Courts decisions in Burlington and Florence County, subject to certain equitable considerations, and children whose parents lack the funds should not be treated differently.

I also want to discuss the monitoring and enforcement sections of this bill. I want to thank Senator KENNEDY for his leadership on this issue. Again, GAO has issued a report that has informed our deliberations around this issue. They noted that the Department of Education found violations of IDEA in 30 of the 31 States monitored. In addition, GAO found that the majority of these violations were for failure to provide actual services to children. That report, issued this year, is titled, ''Special Education: Improved Timeliness and Better Use of Enforcement Actions Could Strengthen Education's Monitoring System.''

When we passed the Americans with Disabilities Act, we said that our four national goals for people with disabilities were equality of opportunity, full participation, independent living, and economic self-sufficiency. But children with disabilities are never going to meet any of those goals if they don't get the tools they need when they are young. So if we truly want equal opportunity for individuals with disabilities, it has to start with IDEA, and with our youth, who are our future. The law must be enforced so they receive the services and supports they need to get a quality education and a brighter future.

As part of the enforcement of this law, States must ensure that local education agencies are meeting their targets to provide a free, appropriate public education. If they fail to do so, the State must take action, including prohibiting the flexible use of any of the local education agency's resources.

In addition to monitoring and enforcement, there are other improvements in this bill. I will mention one area that is near and dear to my heart because of my brother Frank, who, as many of you know, was deaf. In this bill, we add interpreter services to the list of related services, a change that is long overdue and we continue to require the Department of Education to fund captioning so deaf and hard-of-hearing individuals will have equal access to the media.

While I support the bill, I must point out, however, that I am deeply disappointed that this bill does not include mandatory full funding of IDEA. We fought for this on the floor of the Senate. Even though a majority of the Senate agreed, we did not have the needed 60 votes, and it did not become part of the Senate bill. I continue to believe that mandatory funding is required to give schools the resources they need to ensure that all children get a quality education.

This bill does, however, have specific authorized levels that will get us to full funding in 7 years. If we fail to meet these levels, I will continue to argue that Congress should provide mandatory funding to ensure we meet the commitment we made almost 30 years ago.

This is a bill about children. We all tell our children to keep their promises, to fulfill any commitments they make. Yet Congress has not kept its word to these children and their families. We have not provided the resources we said we would. We must fully fund IDEA. This is important to children, to schools, and to our communities. And it is the right thing to do.

I want to thank the staff who worked so hard on this bill. On my staff, I would like to thank Mary Giliberti, Julie Carter, Erik Fatemi, and Justin Chappell. I especially thank Senator KENNEDY's staff for their dedication to children with disabilities, including Connie Garner, Kent Mitchell, Michael Dannenberg, Roberto Rodriguez, and Jeremy Buzzell.

I would also like to thank Denzel McGuire, Annie White, Bill Lucia, and Courtney Brown on Senator GREGG's staff for their efforts to ensure a bipartisan process.

Also, thanks go to Sally Lovejoy and David Cleary with Congressman BOEHNER; Alex Nock with Congressman MILLER; Michael Yudin with Senator BINGAMAN; Carmel Martin, formerly with Senator BINGAMAN's staff; Jamie Fasteau, with Senator MURRAY's; Bethany Little, formerly with Senator MURRAY's staff; Catherine Brown, with Senator CLINTON; Justin King with Senator JEFFORDS; Rebecca Litt, with Senator MIKULSKI; Elyse Wasch, with Senator REED; Maryellen McGuire and Jim Fenton with Senator DODD; Joan Huffer, with Senator DASCHLE; Bethany Dickerson with the Democratic Policy Committee; and Erica Buehrens, with Senator EDWARDS.

Mr. President, IDEA is fundamentally a civil rights statute for children with disabilities. I have worked with my colleagues on this conference to ensure that core rights are protected and enforced.●

NAMING OF JAMES R. BROWNING FEDERAL COURTHOUSE

● Mr. BAUCUS. Mr. President, I would like to speak briefly about legislation to rename the U.S. Courthouse in San Francisco after Judge James R. Browning. This legislation cleared Congress over the weekend. It is a long overdue honor for one of the Nation's finest public servants.

I would like to thank my Senate friends and colleagues for their hard work and support, particularly Senator BOXER, who sponsored the Browning courthouse naming legislation. I would also like to recognize and thank Senator HATCH and Senator STEVENS. Their efforts were crucial in moving this legislation across the finish line in the 109th Congress.

Let me tell you about Judge James R. Browning. First, he is a great man